

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HENRY HENCE,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:08 CV 1231

MARY BERGHUIS, et al.,

Defendants.

REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff's Motion for Summary Judgment. (Dkt. #66).

Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Plaintiff's motion be **denied**.

In his Second Amended Complaint, Plaintiff asserts that Defendants subjected him to "high levels of Environmental Tobacco Smoke (ETS)" in violation of his Eighth Amendment rights. Plaintiff asserts that he was also subjected to toxic paint fumes in violation of his Eighth Amendment rights. Finally, Plaintiff asserts that Defendants transferred him to a different correctional facility in retaliation for filing the present action.

Plaintiff's ETS claims were dismissed on screening. Defendants later filed a motion for summary judgment seeking relief as to Plaintiff's toxic paint fumes claim and retaliatory transfer claim. On January 12, 2011, the undersigned recommended that "Defendants are entitled to summary judgment as to Plaintiff's retaliation claim, but that Plaintiff's Eighth Amendment conditions of confinement claim be permitted to go forward." In the present motion, Plaintiff asserts that he is entitled to summary judgment on his retaliation claims.

Plaintiff has failed to demonstrate that he is entitled to prevail on his retaliation claim. Furthermore, as previously noted, the undersigned has already recommended that Defendants are entitled to summary judgment on Plaintiff's retaliation claims. Accordingly, the undersigned recommends that Plaintiff's motion for summary judgment be **denied**.

CONCLUSION

For the reasons articulated herein, the undersigned recommends that Plaintiff's Motion for Summary Judgment, (dkt. #66), be **denied**.

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Date: January 24, 2011

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge